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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91199922
Party	Plaintiff Christopher A McGrath
Correspondence Address	CHRISTOPHER MCGRATH McG PRODUCTIONS LTD 22 ST JOHN STREET NEWPORT PAGNELL MILTON KEYNES, MK16 8HJ UNITED KINGDOM legal@mcgproductionsltd.com
Submission	Other Motions/Papers
Filer's Name	Helen Hill Minsker
Filer's e-mail	hminsker@bannerwitcoff.com,bwlitdocket@bannerwitcoff.com
Signature	/helen hill minsker/
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

CHRISTOPHER A. McGRATH,	)	
Opposer,	)	
	)	Opposition No. 91199922
v.	)	
	)	Serial No. 85053714
NIKE, INC.,	)	
Applicant.	)	Mark: 
	)	

**APPLICANT’S REPLY TO OPPOSERS RESPONSE TO APPLICANT’S  
MOTION TO STRIKE OPPOSER’S AMENDED NOTICE OF OPPOSITION  
AND TO DISMISS OPPOSITION WITH PREJUDICE PURSUANT TO  
RULE 12(E) FED.R.CIV.P. AND BRIEF IN SUPPORT OF MOTION**

Applicant, NIKE, INC. (“NIKE” or “Applicant”), herewith replies to the response filed by Opposer, CHRISTOPHER A. McGRATH (“McGRATH” or “Opposer”) to Applicant’s August 24, 2012 Motion to Strike.<sup>1</sup>

Opposer’s response to Applicant’s motion does not alter the fact that his August 6, 2012 amended notice of opposition (his fourth notice of opposition) fails to comply with the Board’s rules of procedure or the Federal Rules of Civil Procedure. Applicant has detailed the flaws in Opposer’s August 6 amended notice of opposition in its motion to strike and will not repeat that recitation in this reply. The following examples from Opposer’s response reveal Opposer’s continued disregard for the Board’s orders, the Board’s rules and the Federal Rules of Civil Procedure:

<sup>1</sup> Opposer’s response to Applicant’s Motion to Strike was filed on August 24, 2012.

- (1) Opposer's denial (response ¶ 7) that he is relying on his UK registration and the *First Niagara* case in his fourth amended notice of opposition is contradicted by the statements in the amended notice of opposition itself. (August 6 amended notice of opposition at pp. 1-3)
- (2) Opposer's insistence that because Applicant, in its motions under Rule 12(b)(6) and Rule 12(e) Fed.R.Civ.P., relied on case law, Opposer is entitled to include case law and arguments on the merits in his amended notice of opposition (response ¶¶ 3, 7) is simply wrong and is contrary to the explicit instructions of the Board in its order dated July 24, 2012 (p. 2). (See, e.g. response ¶ 3: "Opposer argues it would be disproportionate to allow the Applicant this freedom [to cite case law] and for the Opposer not to be able to answer in kind.")
- (3) Opposer's request that "...the Trademark Trial and Appeal Board summarily dismisses the Applicant's Trademark Application or move to an expedited resolution at trial" (response ¶ 9) demonstrates that he wants a decision by the Board without having to go through the process and procedures prescribed by the Board for an opposition proceeding.

Opposer's response makes plain his real goal: to proceed based on his own rules of procedure and his own timetable<sup>2</sup> in a case he has neither properly pleaded nor proved. See, e.g. the following quotes from paragraphs 5b and 9 of Opposer's response:

There should be some flexibility for moving to trial, if a trial is necessary in this apparent impasse; and we ask that the Board deliberates in that regard for a possible expedited move to trial, given that the Applicant simply refuses to answer the patently obvious case against them. (¶ 5b)

... Opposer requests that the Trademark Trial and Appeal Board summarily dismisses the Applicant's Trademark Application or move to an expedited resolution at trial. (¶ 9)

Opposer has repeatedly defied orders by the Board instructing him to follow the Board's rules of procedure and the Federal Rules of Procedure (even though the Board has given explicit guidance to Opposer on how to comply with those rules). The Board warned Opposer in its July 24, 2012 order (pp. 2-3) that it would dismiss the opposition with prejudice if Opposer again

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<sup>2</sup> Opposer not only has failed to follow Board rules and the Federal Rules of Civil Procedure with respect to the content of his pleadings, but also with respect to timing. As the Board noted in its July 24, 2012 order, Opposer's response to Applicant's motion for a more definite statement was neither timely nor persuasive. (July 24, 2012 order at p. 2)

failed to comply with its order and that it would be reluctant to give him another opportunity to file an amended notice of opposition (July 24 order at pp. 3-4). In view of Opposer's continued refusal to follow the rules and procedures required of all litigants in Board proceeding, the Board should dismiss the opposition with prejudice.

Respectfully submitted,

Date: September 10, 2012

By: /helen hill minsker/  
Helen Hill Minsker  
Banner & Witcoff, Ltd.  
Attorneys for NIKE, Inc.

Ten South Wacker Drive  
Suite 3000  
Chicago, Illinois 60606  
(T) 312-463-5000  
(F) 312-463-5001  
Email: [hminsker@bannerwitcoff.com](mailto:hminsker@bannerwitcoff.com)  
[bwlitdocket@bannerwitcoff.com](mailto:bwlitdocket@bannerwitcoff.com)

## CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of September, 2012, a true and complete copy of the foregoing **APPLICANT'S REPLY TO OPPOSER'S RESPONSE TO APPLICANT'S MOTION TO STRIKE OPPOSER'S AMENDED NOTICE OF OPPOSITION AND TO DISMISS OPPOSITION WITH PREJUDICE PURSUANT TO RULE 12(E) FED.R.CIV.P. AND BRIEF IN SUPPORT OF MOTION** has been served on Opposer Christopher A. McGrath via First Class Mail, postage prepaid, and also by email, addressed as follows:

Mr. Christopher McGrath  
McG Productions Ltd.  
22 St. John Street  
Newport Pagnell, Milton Keynes,  
United Kingdom MK16 8HJ

Email: [legal@mcgproductionsltd.com](mailto:legal@mcgproductionsltd.com)

By: /helen hill minsker/